

June 21, 2017

Via Hand Delivery

JUN 26 2017

Mark Soiland
President
Soiland Company, Inc.
7171 Stony Point Road
Cotati, CA 94931

Tom Shearer
Operations Director
Grab N' Grow
2759 Llano Road
Santa Rosa, CA 95407

Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Grab N' Grow Soil Products:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Grab N' Grow Soil Products facility located at 2759 Llano Road in Santa Rosa, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this Notice is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is a Sonoma County-based environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Windmill Creek, a tributary of the

Russian River (which is listed as impaired for sediment, temperature, and bacteria under CWA §303(d)).

Grab N' Grow Soil Products (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast RWQCB Water Quality Control Plan or "Basin Plan".

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent ("NOI") on March 12, 2010, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 1 49I022561.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

Grab N' Grow Soil Products' operations include the conversion of organic waste materials, including green waste, grape/apple pomace, and cow/horse/chicken manure, into soil amendments. The soil amendments are sold in a retail outlet at the Facility as top soils, potting soils, seed starters, composts, barks and ground covers, custom blending and sheet mulching products.

Site operations are covered under Standard Industrial Code ("SIC") 0711, Soil Preparation Services.

Site operations take place primarily outdoors on a site that slopes towards storm drains which eventually enter the navigable waters of the Laguna de Santa Rosa and the Russian River, all of which are in proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified

in this Notice can discharge to the Laguna de Santa Rosa and the Russian River.

B. Grab N' Grow Soil Products' Specific Violations

1. Failure to File A Complete Annual Report

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

Pursuant to Section XV of the General Permit, all Dischargers must conduct at least one Annual Evaluation for each reporting year (July 1 to June 30). The Discharger must revise the SWPPP, as appropriate, and implement the revisions within 90 days of the Annual Evaluation.

At a minimum, Annual Evaluations must consist of:

(a) review of all sampling, visual observation, and inspection records conducted during the previous reporting year; (b) inspections of all areas of industrial activity and associated potential pollutant sources, all drainage areas previously identified as having no exposure to industrial activities and materials, equipment needed to implement the BMPs, and any BMPs; (c) review and effectiveness assessment of all BMPs for each area of industrial activity and associated potential pollutant sources to determine if the BMPs are properly designed, implemented, and are effective in reducing and preventing pollutants in industrial storm water discharges and authorized NSWDS; and (d) assessment of any other factors needed to comply with the requirements of the General Permit.

The Discharger must certify in its Annual Report that the company has completed their Annual Evaluation by June 30 of the reporting year.

As of the date of this Notice, Grab N' Grow Soil Products has failed to conduct its Annual Evaluation by for the 2015-2016 reporting year and upload verification of same into the SMARTS database system. Thus, its Annual Report for that year is still incomplete.

2. Failure to Comply with the Facility SWPPP and Level 1 ERA Report

The Discharger has failed to comply with both its Facility SWPPP, which was prepared in June of 2015; and the Level 1 ERA Evaluation, which was completed in June of 2016. The facility has exhibited poor housekeeping practices and deficient best management practices (BMPs) and has failed to implement advanced BMPs which were scheduled in the SWPPP and recommended in the ERA Report.

Specifically, the Level 1 ERA Report noted that (a) the Discharger was not covering composting elements or diverting the flow over/through them in all drainage areas, nor were they storing the piles on compacted soil; (b) the land application rate exceeded the maximum described in the SWPPP, which indicated the need for additional employee training of land application procedures; (c) the facility retention/detention pond was of insufficient capacity to contain the flows from multiple storm events in all areas; and (d) repairs were needed to the compacted clay berm between detained composting area and industrial storm water runoff area.

To date, Grab N' Grow has failed to implement the following BMPs contained in their SWPPP and Level 1 ERA report:

- A. Exposure minimization – construction of awnings to cover pomace and manure stockpiles, and an additional awning over the outside shop area; paving the retail area and covering product bunkers. Both the SWPPP and the Level 1 ERA report had these BMPs scheduled for completion no later than the end of 2016.
- B. Retention Pond – adding capacity to the current detention/retention pond. The SWPPP had this scheduled for completion by the end of 2016, and the Level 1 ERA Report no later than Spring of 2017.

3. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the

Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Grab N’ Grow Soil Products has violated and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

Grab N’ Grow Soil Products’ sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels (“NALs”) for common parameters. A copy of Table 2 is included with this Notice.

Grab N’ Grow Soil Products’ storm water analyses from storm events occurring in December of 2016, and January and February of 2017, contained levels for tested parameters in excess of Annual or Instantaneous NAL levels, as listed below. The discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations.

Furthermore, the Discharger has had continuing parameter exceedances since at least February of 2014. Per an Exceedance letter from RWQCB dated October 14, 2014, Grab N’ Grow’s test result for Biochemical Oxygen Demand was 5900 mg/l, while the US EPA Benchmark is only 30 mg/l. Its test result for Chemical Oxygen Demand was 9200 mg/l, compared to the US EPA Benchmark of 120 mg/l.

The exceedances listed below all occurred after Grab N’ Grow entered Level 1 status and submitted its Level 1 Exceedance Response Action report.

Date of Sample Collection	Drainage Collection Point	Parameter	Concentration in Discharge	NAL Annual or Instantaneous Value
12/16/16	P1	Ammonia	48 mg/l	2.14
12/16/16	P1	TSS	470 mg/l	100
12/16/16	P1	Iron	55 mg/l	1.0
12/16/16	P1	Phosphorus	140 mg/l	2.0
12/16/16	P1	Zinc	.75 mg/l	.26
12/16/16	P1	O&G	42 mg/l	15
12/16/16	P1	Total Nitrogen	180 mg/l	1.0
1/4/17	D1	Iron	15 mg/l	1.0
1/4/17	D1	TSS	270 mg/l	100
1/4/17	D1	Phosphorus	6.8 mg/l	2.0
1/10/17	D1	Iron	21 mg/l	1.0
1/10/17	D1	TSS	380 mg/l	100
1/10/17	D1	Total Nitrogen	24 mg/l	1.0
2/7/17	D1	Iron	13 mg/l	1.0
2/7/17	D1	Phosphorus	22 mg/l	2.0
2/7/17	D1	TSS	180 mg/l	100
2/17/17	D1	Iron	42 mg/l	1.0
2/17/17	D1	Phosphorus	5.6 mg/l	2.0
2/17/17	D1	TSS	570 mg/l	100

The foregoing evidences only the most significant exceedances. Minor exceedances were also noted in discharge locations SW1 and SW2 for the above test dates.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility is located just south of Windmill Creek, which is a tributary of both the Laguna de Santa Rosa and the Russian River – all waters of the United States. The Russian River is listed under the CWA as impaired for Nutrients (D.O., Nitrogen, Phosphorous), Pathogens (Indicator Bacteria), Metals (Mercury), Misc. (Temperature), and Sediment (Siltation). Receiving water concerns for the Facility are nitrogen, phosphorous and sediment, which are analyzed for as N+N (nitrogen), total phosphorous and TSS (suspended sediment). All illegal discharges and activities

described in this Notice occur in close proximity to the above-identified waters. During storm events, the discharges are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically the Laguna de Santa Rosa and the Russian River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is Grab N' Grow Soil Products ("the Discharger"), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Grab N' Grow Soil Products' permanent facility address of 2759 Llano Road, in Santa Rosa, California, and includes the adjoining navigable waters of the Laguna de Santa Rosa and the Russian River, respectively - both waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least February 6, 2014, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

*Gerard Duenas, President
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1275 Fourth Street #141
Santa Rosa, CA 95404
Telephone: (707) 304-2649
Email: calenvproassn@yahoo.com*

AND

*Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinhalegal.com*

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Laguna de Santa Rosa watershed and the Russian River. Members of CEPA use the watershed and the Russian River for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger’s violations of the CWA as set forth in this Notice.

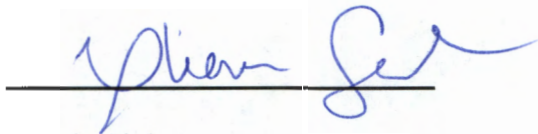
CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

TABLE 2 – Parameter NAL Values, Test Methods and Reporting Units

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403